(29)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(S) No.4680 of 2007

PETITIONER Umakant Pandey Son of Late J.P. Pandey, aged about 50 years, Stenographer Grade-I, Office of the Collector Dantewada, District Dantewada (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh, Through : The Secretary, Department of Revenue, D.K.S. Bhawan, Raipur (C.G.)
2. The Aver Sachiv, Department of Revenue, D.K.S. Bhawan, Raipur (C.G.)
3. The Collector, Dantewada, District Dantewada (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Appearance:

Shri R.K. Kesharwani and Shri M.K. Bhaduri, Advocates for the petitioner.

Shri Yashwant Singh, Govt. Advocate for the State on advance copy

---

ORAL ORDER
(14.08.2007)

SUNIL KUMAR SINHA, J.

Heard.

The challenge is made to the order dated 8.6.2007 (Annexure-P/2), by which the petitioner, who is working on the post of Stenographer Grade-I in District Office Dantewada, has been transferred to District Office Bijapur.

Learned counsel for the petitioner argue that the petitioner was posted at Dantewada since 14.11.2005 and without completion of 3 years, he has been transferred, therefore, the order has been passed in violation of transfer policy. They also argue that firstly, one Neeraj Kumar Kanoje was transferred from Rajnandgaon to Bijapur but his transfer was cancelled and the petitioner has been ordered to be transferred to Bijapur, therefore,

the order appears to be passed in malafide exercise of jurisdiction.

So far as first ground regarding violation of policy is concerned, in the matter of ***Union of India- Vs- S.L. Abbas, AIR 1993 SC 2444***, it has been held by the Apex Court that the guidelines issued by the Government about the transfer of Government employee do not confer upon the Government employee a legally enforceable right. It has also been held vide para 7 of the aforesaid judgment that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. However, it has been further held that while ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject.

Further in the matter of ***State of U.P. and others vs. Gobardhan Lal, 2004 AIR SCW 2082***, it has been observed by the Apex Court that even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. The Apex Court has further observed that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

Admittedly, the transfer is an exigency of service and which employee should be transferred and posted at which place is a matter to be decided by employer. There may be an instance like the present one, that previously some other person was directed to be transferred at a particular place and on account of some reason, his transfer was cancelled and subsequently on his place

(31)

some other person was directed to go there. This itself does not yield to the factum of malafide. Unless there is a case in which malafide appears on record, or an element of malafide is brought on record by other substantial material, it can not be inferred simply by taking a ground in this regard.

There appears to be no force in the arguments advanced by the learned counsel for the petitioner.

The petition has no merit, the same is liable to be dismissed and is accordingly dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

vatti